



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF E-O-N-A-, INC.

DATE: DEC. 18, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a seller and marketer of engineering products and services, seeks to employ the Beneficiary as a human factors engineer. It requests his classification under the second-preference, immigrant category as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, “EB-2” category allows a U.S. business to sponsor a foreign national for lawful permanent resident status to work in a job requiring at least a master’s degree, or a bachelor’s degree followed by five years of experience.

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate its required ability to pay the position’s proffered wage.

On appeal, the Petitioner asserts that the Director misapplied case law and disregarded evidence of the company’s ability to pay.

Upon *de novo* review, we will withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as an advanced degree professional generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for an offered position, and that employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If the DOL approves an offered position, an employer must next submit the labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS determines whether a beneficiary meets the DOL-certified, job requirements of a position. If USCIS grants a petition, a foreign national may finally apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ABILITY TO PAY THE PROFFERED WAGE

A petitioner must demonstrate its continuing ability to pay the proffered wage of an offered position, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal tax returns, or audited financial statements. *Id.*

Here, the labor certification states the proffered wage of the offered position of human factors engineer as \$101,130 a year. The petition's priority date is May 22, 2017, the date the DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

As of the Director's decision, required evidence of the Petitioner's ability to pay the proffered wage in 2017, the year of the petition's priority date, was not yet available. The Director based her decision on evidence predating the priority date. The Petitioner submitted a copy of its federal income tax return for 2015-16.¹ It also submitted copies of financial statements for 2015-16 and 2016-17. Contrary to 8 C.F.R. § 204.5(g)(2), however, the financial statements did not indicate that they were audited.

Required evidence of the Petitioner's ability to pay after May 22, 2017, should now be available. We will therefore remand this matter to the Director. On remand, the Director should ask the Petitioner to submit copies of annual reports, federal tax returns, or audited financial statements covering periods running after the petition's priority date. The Petitioner may also submit additional evidence of ability to pay, including documentation of wages it paid to the Beneficiary in 2017 and 2018, and supporting the factors stated in *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). Upon receipt of a timely response, the Director should review the entire record and issue a new decision.

III. CONCLUSION

As of the decision, required evidence of the Petitioner's ability to pay the proffered wage from the petition's priority date onward was not yet available. Copies of annual reports, federal tax returns, or audited financial statements covering periods running after May 22, 2017, should now be available.

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of E-O-N-A-, Inc.*, ID# 2407225 (AAO Dec. 18, 2018)

¹ The Petitioner's fiscal year runs from October 1 through September 30.